



August 26, 2022

Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

RE: Community Solar, Docket No. E-00000A-22-0103 and APS RES, Docket No. E-01345A-21-0240

Madam Chair, Commissioners, Commission Staff, and Interested Stakeholders,

The signatories to this letter — a coalition of solar and storage industry partners, including developers, subscriber acquisition and management firms, and advocacy groups — appreciate the Commission and Staff conducting the working group meetings regarding the implementation of a community solar program in Arizona. We believe that a properly constructed community solar program will provide bill savings to electric utility customers, promote electric grid resiliency, and assist Arizona in its transition to clean energy. We are committed to docketing information that will assist in the Commission's consideration of a proposal for implementation and we look forward to continued participation and discussion in the working group sessions.

We put forward, as **Attachment A**, this draft program design to aid in the working group discussions and the successful adoption of a community solar program in advance of the November Open Meeting.

We additionally put forward, as **Attachment B**, an assessment regarding the Commission's authority to implement the community solar program and tariff outside of a rate case.

Further, we appreciate the letter filed by the Chairwoman on August 23, 2022 regarding the various models of community solar her office sees as relevant to this proceeding. The undersigned stakeholders plan to file a separate response to that letter as soon as possible with answers to the questions therein that are grounded in the program proposal put forth below.

We appreciate the opportunity to address these important concerns. We look forward to continuing to engage in the working group process to develop a successful community solar program in Arizona.

Respectfully,

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Attachment A: Competitive Community Solar and Community Solar Paired with Energy Storage in Arizona

Findings of Fact

1. The Arizona Corporation Commission (ACC or Commission) ordered the creation of a community solar working group to capture best practices from around the country and establish the mechanics, implementation, and operational details of a community solar program in Arizona Public Service (APS) territory (Docket No. E-01345A-21-0240).
2. Arizona is among the most efficient places in the world for the production of solar energy.
3. Solar energy is an abundant, domestic, renewable, and non-polluting energy resource.
4. Solar energy can support the United States and its allies in reducing the world's dependence on fossil fuels.
5. Competitive community solar programs provide consumers, including homeowners, renters, and businesses, access to the benefits of local solar energy generation unconstrained by the physical attributes of their home or business like roof space, shading, or ownership status, or their financial status, like available capital or credit score.
6. Competitive community solar programs can expand access to solar energy and electric bill savings to low-income households and reduce the energy burdens of disadvantaged communities.
7. Competitive community solar can foster meaningful local economic growth and create family-sustaining jobs based in Arizona as well as opportunities for competition and innovative business models.
8. Competitive community solar can create opportunities for agricultural customers to host community solar projects that are compatible with farming and ranching and create stable revenue from lease payments while contributing to Arizona's energy needs.
9. Local solar energy generation can contribute to a more resilient grid in a timely manner and defer the need for costly new transmission and distribution system build-out.
10. Competitive community solar will increase options for customers to procure and maximize the use of renewable energy, in addition to and alongside existing programs like green tariffs and utility-run solar programs.
11. Competitive community solar paired with storage can provide electricity to the grid and utility partners at times when consumer demand is at its peak and can be implemented faster than utility-scale transmission system build-out.
12. The capital costs, return on investment, operation and maintenance, and risk of loss in competitive community solar falls on the community solar project Subscriber Organization, and not on the utility or its ratepayers.
13. The deployment of solar energy facilities including community solar can reduce the cost of energy for all ratepayers, while lowering carbon emissions and reducing fossil fuel consumption in Arizona.
14. Competitive community solar operates under similar basic tenets to Arizona Public Service (APS) Rate Rider AG-X whereby a third party entity provides wholesale power to the utility on behalf of a customer.

15. Competitive community solar paired with energy storage provides benefits similar to those enumerated above.

1. **Definitions**

- A. **Community Solar Bill Credit:** The monetary value (in dollars) of the electricity and other grid services generated by a Community Solar Facility that appears as an offset on a Subscriber's utility electricity bill.
- B. **Bill Credit Rate:** The dollar-per-kilowatt-hour rate determined and approved by the Commission that is used to determine a Subscriber's Community Solar Bill Credit.
- C. **Community Solar Facility:** A facility that generates electricity by means of a solar photovoltaic device or a solar photovoltaic device paired with energy storage that generates Bill Credits for Subscribers proportional to the Subscriber's share of the facility's output on a monthly basis. Community Solar Facilities must comply with the following requirements:
 - i. **Size:** Nameplate capacity shall not exceed twenty (20) megawatts alternating current (AC).
 - ii. **Location**
 - a. The facility must interconnect to distribution facilities owned and operated by APS.
 - b. The facility may be co-located with other energy resources.
 - c. The facility may be co-located with other Community Solar Facilities on the same parcel of land, but their aggregate total nameplate capacity may not exceed twenty (20) megawatts alternating current (AC).
 - iii. **Subscriptions**
 - a. The Community Solar Facility must have at least five (5) Subscribers.
 - b. A single Subscriber must not be allocated more than forty (40) percent of the generating capacity of the facility.
 - c. At least twenty (20) percent of the capacity of a Community Solar Facility must be subscribed in Subscriptions of twenty-five (25) kilowatts or less.
 - d. At least twenty (20) percent of the capacity of the facility must be set aside for subscriptions by Low-Income Subscribers and/or Low-Income Service Providers. Non-Low-Income customers may not subscribe to this portion of the facility's capacity.

- D. **Low-Income Subscriber:** Subscribers whose household income is at or below 80% of Area Median Income, Subscribers who meet the criteria in Section 12, and Subscribers who are Low-Income Service Providers.
- E. **Low-Income Service Provider:** An organization whose primary purpose is to serve Low-Income individuals and households or other Low-Income Service Providers.
- F. **Non-Ministerial Permit:** A permit in which one or more officials or agencies consider various factors and exercise some discretion in deciding whether to issue or deny permits. Examples include conditional use permits, variances and special orders.
- G. **Subscriber:** A retail customer of APS that has purchased a Subscription to a portion of the output of a Community Solar Facility and belongs to a residential, extra-small commercial, or small commercial rate class or, regardless of rate class, is a non-profit, school, or municipal retail customer.
- H. **Subscriber Organization:** A for-profit entity, non-profit entity, or any individual person or group of persons that owns or operates a Community Solar Facility. Subscriber Organizations may include APS and third-party developers. Subscriber Organizations shall not be considered utilities solely as a result of their ownership or operation of a Community Solar Facility.
- I. **Subscription:** A contract or other agreement between a Subscriber and the owner of a Community Solar Facility that allows a Subscriber to receive Bill Credits from the utility in exchange for the utility receiving that facility's generation.
 - i. A Subscription to a Community Solar Facility shall be:
 - a. Sized such that the anticipated production from the capacity subscribed does not exceed 100% of the Subscriber's historic annual average electricity consumption,
 - b. Portable, such that a Subscriber may retain their Subscription if they move to a new address within the same qualifying utility service territory and
 - c. Transferable, such that a Subscriber may assign or sell Subscriptions to another eligible ratepayer within the same qualifying utility service territory.
 - ii. Subscription fees shall be equal to no more than ninety (90) percent of the value of the Bill Credit Rate to guarantee Subscriber savings, unless a higher fee is agreed to by all subscribers of a facility.
 - iii. Subscribers shall not be charged Subscription fees until after they have started receiving Bill Credits from their utility.
 - iv. Subscribers shall be given the right to terminate their contract at any point. Residential Subscribers shall not be charged early termination fees

and shall not be required to provide more than thirty (30) days' notice of termination.

J. **Unsubscribed Energy:** Electricity, measured in kilowatt-hours, produced by a Community Solar Facility that is not allocated to a Subscriber.

2. **Ownership.** Third parties and APS are permitted to develop, own, and operate Community Solar Facilities subject to the limitations in section 7.

3. **Bill crediting.**

A. Customers may subscribe to a portion of a Community Solar Facility and an electric utility shall provide Bill Credits to those Subscribers for electricity and other grid services generated by the Facility and delivered to the utility for not less than twenty-five (25) years from the date the facility is first placed into operation.

B. APS shall continue to bill community solar Subscribers for their electricity consumption and all terms and conditions of their APS service shall continue to apply. Subscribers will remain on their applicable rate schedule.

C. In addition, in administering Community Solar Bill Credits, APS shall:

i. Apply Community Solar Bill Credits to Subscribers' bills within one billing cycle following the cycle during which the electricity was generated and delivered to APS; and

ii. Carry over any amount of a Community Solar Bill Credit that exceeds the Subscriber's monthly bill and apply it to the Subscriber's next monthly bill unless and until the Subscriber terminates service with the qualifying utility.

iii. If the Subscriber terminates electric service with the qualifying utility, the utility shall issue a check to the customer for the value of any accumulated and unused Community Solar Bill Credits.

D. Within twelve (12) months of the establishment of the community solar program, APS shall establish utility consolidated billing, whereby APS will add the monthly Subscription charge to the utility bill of community solar Subscribers and remit payment received for those charges to the appropriate Subscriber Organization.

E. The Bill Credit Rate shall be equal to ____.

i. *[The Commission-approved Bill Credit Rate is to be developed as part of this proceeding]*

4. **Data sharing.**

A. Prior to commercial operation, a Subscriber Organization must provide the utility with a Subscriber list indicating the percentage of generation attributable to each of the utility's customers who are Subscribers to a Community Solar Facility. The Subscriber Organization may update its list of Subscribers on a monthly basis to reflect canceling or adjusting Subscriptions and/or to add or remove Subscribers.

- B. Prior to commercial operation, the Subscriber Organization shall report to the Commission the percentage of capacity that has been subscribed by Low-Income Subscribers toward the twenty (20) percent Low-Income carveout. The Subscriber Organization shall have one (1) year following the date of commercial operation to demonstrate compliance with the twenty (20) percent Low-Income carveout.
 - C. Subscriber Organizations shall file a report with the utility on a bi-annual (i.e., twice a year) basis that includes the following information:
 - i. Total number of Subscribers and the number of kilowatts represented by each Subscription;
 - ii. Total number of Low-Income Subscribers and the number of kilowatts represented by each Low-Income Subscription;
 - iii. Total number of Low-Income Service Provider Subscribers and the amount of kilowatts represented by each Low-Income Service Provider's Subscription
 - iv. Total output (in kWh) delivered to qualifying Low-Income and/or Low-Income Service Provider Subscribers.
 - v. Detailed plan for meeting its Low-Income Subscriber carveout in the upcoming year if the target was not met for the period covered by the report.
 - D. The utility shall maintain a consolidated list of active Subscriber Organizations, including the number of Low-Income Subscribers for each Subscriber Organization.
 - E. Each Subscriber Organization shall retain a record of all disclosure forms, Low-Income Subscriber confirmation of eligibility, and Subscriber allocation lists for a period of at least three (3) years. Each Subscriber Organization shall retain copies of Subscriber contracts for a period of at least one (1) year from the date of their expiration. Each of these documents must be made available within one (1) week of the request by the Commission or Commission Staff.
5. **Transfer of power.** Upon commercial operation, a Community Solar Facility's output will be delivered to the APS distribution system and APS will take title to all output.
6. **Interconnection of community solar facilities.**
- A. The Community Solar Facility must be interconnected to a utility's distribution system.
 - B. Within eighteen (18) months of the establishment of the community solar program, APS shall publish a distributed generation hosting capacity map. The information on this hosting capacity map shall include, at a minimum:
 - i. Locations of APS distribution circuits, substations, sub-transmission systems
 - ii. Results of hosting capacity analysis quantifying the maximum amount of power than can be injected to, and drawn from, the distribution system requiring minimal to no distribution upgrades or operational restrictions

- iii. Current, queued, and total distributed generation interconnection amounts
- iv. Downloadable datasets
- v. Information to provide at the circuit segment level:
 - a. Segment identification
 - b. Node identification
 - c. Integration capacity (MW)
 - d. Date the data was last updated
- vi. Information to provide at the circuit level:
 - a. Circuit name
 - b. Circuit voltage (kV)
 - c. Substation name
 - d. System name
 - e. Existing generation (MW)
 - f. Queued generation (MW)
 - g. Total generation (MW)
 - h. Customer type breakdown on a selected circuit
 - i. Date the data was last updated
- vii. Information to provide at the substation level:
 - a. Substation name
 - b. Substation identification
 - c. System name
 - d. Existing generation (MW)
 - e. Queued generation (MW)
 - f. Remaining available generation (MW)
 - g. Total generation (MW)
 - h. Date the data was last updated
- viii. Data on the hosting capacity map shall be updated by APS at least once every three (3) months.
- C. APS is encouraged to model their hosting capacity map off New York's Hosting Capacity Map.
- D. Within thirty (30) days of Commission approval of the community solar program, APS shall convene a working group of interested stakeholders, including Community Solar Subscriber Organizations, to discuss interconnection cost sharing. Within six months of the first interconnection cost sharing working group meeting, the working group shall file an interconnection cost sharing proposal with the Commission for approval.

7. Program structure.

- A. The Year 1 annual capacity cap applicable to APS service territory is set at four hundred (400) megawatts alternating current, which equates to approximately four (4) percent of APS total annual retail sales when converted from kilowatt-hours using a state-average yield assumption. Each year, the capacity cap shall be equal to four hundred (400) megawatts AC plus or minus the net

percentage change in APS's trailing three-year average retail sales, plus any unused capacity from the previous year's capacity cap.

- i. Community Solar Facilities whose nameplate capacity is less than or equal to five hundred (500) kilowatts shall be exempt from this capacity cap.
 - ii. APS shall be limited to developing Community Solar Facilities whose aggregate nameplate capacity does not exceed five (5) percent of the annual capacity cap.
 - iii. Allocation of the program capacity shall be awarded on a first-come first-serve basis to Subscriber Organizations that can demonstrate:
 - a. Proof of legally binding site control
 - b. An executed interconnection agreement with the utility
 - c. Evidence of having obtained all necessary Non-Ministerial Permits
 - d. Payment of an at-risk project deposit of \$10k/MW, to be payable in a letter of credit or cash. This security deposit shall be refunded to the Subscriber Organization upon completion of commercial operation and demonstration that the Low-Income Subscription carveout has been met. Subscriber Organizations that are either nonprofits or individuals are exempt from this requirement. This deposit shall be refunded to projects not accepted to the program.
 - iv. The utility shall notify a Subscriber Organization whether its project has been awarded capacity in the program within thirty (30) days of its application submission.
8. **Program applications.** The utilities shall begin taking applications for the program on or before six (6) months following the Commission approval of this program.
9. **Renewable Energy Certificates (RECs) belong to the Subscriber Organization.** Any RECs created from a Community Solar Facility's production of electricity are the property of the Subscriber Organization. The Subscriber Organization may sell, accumulate, retire, or distribute to Subscribers the Subscriber Organization's RECs.
10. **Unsubscribed energy.** If a Community Solar Facility is not fully subscribed in a given month, the Unsubscribed Energy may be rolled forward on the Community Solar Facility account for up to one year from its month of generation and allocated by the Subscriber Organization to Subscribers at any time during that period. At the end of that period, any undistributed Bill Credit shall be removed, and the Unsubscribed Energy shall be purchased by the qualifying utility at its applicable avoided cost of energy rate as approved by the Commission.
11. **APS incremental cost recovery.** APS may propose to recover the incremental administrative costs attributable to running the competitive community solar program.

Any incremental administrative costs proposed for recovery by the utility must be sustained with data and an independent analysis by the Commission should verify the amount needed for these costs.

12. Minimize the burden of income verification.

- A. Low-Income Subscribers eligible for the Low-Income capacity carveout may qualify as such based on their participation in any of the following programs:
 - i. Medicaid
 - ii. Supplemental Nutrition Assistance Program (SNAP)
 - iii. Low-Income Home Energy Assistance Program (LIHEAP)
 - iv. First-time homeowner programs and housing rehabilitation programs
 - v. Living in a low-income or affordable housing facility, including a facility that is master-metered
 - vi. State and federal income tax credit programs
 - vii. Any utility low-income assistance programs
 - viii. Any other state or federal low-income assistance program
- B. Low-Income Subscribers may also be eligible for the capacity carveout by signing a self-attestation that the customer's income and household size qualify the customer as a Low-Income Subscriber.
- C. Low-Income Subscribers may also be eligible for the capacity carveout if the residence is located in a census block group in which seventy (70) percent or more of the households earn less than eighty (80) percent of the Area Median Income, as determined by data from the U.S. Department of Housing and Urban Development.
- D. Low-Income Service Providers shall be subject to verification as such by APS.

13. Consumer protection standards.

- A. Subscriber protections
 - i. Enrollment: A Subscriber Organization shall not use credit checks as a means to establish the eligibility of a residential customer to become a Subscriber.
 - ii. Within sixty (60) days of program approval, the Commission shall develop a standard disclosure form identifying the information to be provided by Subscriber Organizations to potential Subscribers, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of Subscriptions, key contract terms, and other relevant but reasonable information pertaining to the Subscription, as well as grievance and enforcement procedures. The key contract terms to be disclosed on the form are Subscription Size (kW DC), Estimated Contract Effective Date, Contract Term (months or years), Option to Renew Y/N?, Enrollment Costs/Subscription Fees, Payment Terms, Rate Discount, Estimated Total One Year Payments, Early Termination or Cancellation Terms, and Subscription Portability or Transferability. The Subscriber Organization shall provide the form to a

potential Subscriber and allow them to review the form's disclosures before entering into a Subscription Agreement.

- iii. Subscriber Organizations and APS will provide consumer protection materials on a program website and through printed materials.

B. Subscription Agreements

- i. Each Subscriber Organization shall develop and implement a written Subscriber Agreement containing the organization's terms and conditions for subscribing to the Community Solar Facility.
- ii. The Subscriber Agreement must include the following terms, at a minimum:
 - a. General project information
 - b. The effective date and term of the agreement
 - c. Identification of all charges and fees
 - d. Payment details
 - e. Information about the Bill Credit mechanism
 - f. A comparison of the Subscriber's net bill with and without the Subscription
 - g. The terms and conditions of service
 - h. The process for customer notification if the Community Solar Facility is out of service
 - i. The customer protections provided
 - j. Contact information for questions and complaints and
 - k. The Subscriber Organization's commitment to notify the Subscriber of changes that could impact the Subscriber.

C. Disputes

- i. Complaints by Subscribers against Subscriber Organizations should first be submitted to the Subscriber Organization for resolution. If a dispute is not resolved, Subscribers should submit their complaint to APS for informal resolution, who shall work with the Subscriber Organization to resolve the issue. Subscribers who are unable to receive resolution through these venues can seek assistance from the Attorney General's office. APS may, in its discretion, refer serious issues to the Attorney General to pursue enforcement proceedings.
- ii. Subscriber Organizations found by any means to have violated consumer protection standards may be subject, at a minimum, to a suspension or removal as a Subscriber Organization by APS.
- iii. Failure by APS to provide accurate and timely Bill Credits to Subscribers shall be treated as a failure to accurately bill those customers and shall face appropriate penalties from the Commission or the Attorney General.

Attachment B: Assessment of Commission authority to implement a community solar program and tariff outside of a rate case proceeding

A community solar program can be adopted outside of a rate case setting. The Commission has considerable discretion when setting rates and although Arizona law imposes certain ratemaking **requirements** on the Commission, those requirements **do not apply to this community solar docket**. Furthermore, even if they were applicable, such requirements **do not necessitate a rate case** in the first place.

Rate Setting Requirements

Arizona law broadly imposes two ratemaking requirements on the Commission. First, the Commission must determine the fair value of a utility's property when it sets rates. Second, the Commission must set a rate of return and consider the impact a rate increase may have on a utility's overall rate of return. Below, we explain each of these elements and why they are inapplicable to the community solar tariff being developed and how, even if they do apply, they are not a barrier to implementing this tariff in the current docket.

1. Fair Value Determination

Article 15, Section 14 of the Arizona Constitution requires that the Commission determine the fair value of a utility's property when setting rates.¹ Generally, this happens during a rate case and is the first step of the rate case process. During that process, the Commission begins by determining the fair value of the utility's property – i.e., the utility's "rate base" – then sets a reasonable rate of return for the utility based on that figure, and ultimately designs rates intended to reach that return.

The fair value requirement applies only to the rate base component of that process and applicable case law makes this clear. The Supreme Court opinion in the recent *RUCO v. Arizona Corporation Commission* case specifies that, "Under Arizona's Constitution, the "fair value" requirement applies **only to the 'rate base' element** of the traditional ratemaking equation. The rate base element involves a calculation of, in the Constitution's language, 'the fair value of the [utility's] property within the state.'"²

The implementation of a community solar program and tariff has no relationship to or impact on the fair value of APS's property. The tariff contemplated to implement a community solar program in APS territory will not add to or subtract from APS's rate base. Instead, the community solar tariff will set out how participating customers are credited on their bills for the

¹ See *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 151, 294 P.2d 378, 382 (1956) ("It is clear, therefore, that under our constitution as interpreted by this court, the commission is required to find the fair value of the company's property and use such finding as a rate base for the purpose of calculating what are just and reasonable rates.")

² *Residential Util. Consumer Off. v. Arizona Corp. Comm'n*, 240 Ariz. 108, 112, 377 P.3d 305, 309 (2016) (citing *US W. Commc'ns, Inc. v. Arizona Corp. Comm'n*, 201 Ariz. 242, 34 P.3.d. 351 (2001); Ariz. Const. art. 15, § 14) (emphasis added).

energy and grid services provided by locally located third-party owned community solar systems along with other program requirements. As a result, this tariff does not impact fair value.

Even if a fair value were impacted and a determination required (again, it is not) there is no requirement that this be done in a rate case. In fact, in the *RUCO* case, the Court held that “A full rate case is one permissible method for determining fair value. Such a proceeding, however, is a product of the Commission’s own rules and practice. ***It is not constitutionally mandated.***”³ As a result, fair value is not a barrier to the Commission adopting a tariff to implement a community solar program in this proceeding.

2. Rate of Return Consideration

Arizona law also requires that the Commission set a rate of return and consider the impact that rate increases have on a utility’s overall rate of return. This issue was addressed in *Scates v. Arizona Corporation Commission*.⁴ The *Scates* case involved a rate increase that the Commission approved for Mountain States telephone company. The new rates increased Mountain States’ revenue by 2%, totaled \$5 million, and were approved in between rate cases. At the hearing, the Commission made no effort to determine what impact the rate increase would have on the rate of return received by the company.⁵ As a result, the Court of Appeals held that “the Commission was without authority to increase the rate without any consideration of the overall impact of that rate increase upon the return of Mountain States.”⁶ Thus, the Commission cannot approve a rate increase without considering what effect the increase will have on the utility’s rate of return.

In this instance, a community solar tariff has no impact on APS’ rate of return because ***it does not alter any of APS’s rates***. Because APS’s rates do not change with the implementation of a community solar tariff, the rate of return requirement, just like the fair value requirement, is entirely inapplicable.

In sum, neither of these rate setting requirements will prevent the Commission from approving a community solar tariff outside of a rate case. The tariff will not alter APS’ rate base, which makes a fair value determination unnecessary. Similarly, the tariff will not alter APS’ rate of return or recovery, so an evaluation of the tariff’s impact on APS’ rate of return is also unnecessary. Moreover, despite the inapplicability of these requirements, should the Commission elect to consider fair value as part of this community solar tariff, case law makes clear that this examination can occur outside a rate case.

³ *Id.*, 240 Ariz. 108, 112, 377 P.3d at 309

⁴ *Scates v. Arizona Corp. Comm’n*, 118 Ariz. 531, 578 P.2d 612 (Ct. App. 1978).

⁵ *Id.*, 118 Ariz. 533, 578 P.2d at 614.

⁶ *Id.*, 118 Ariz. 537, 578 P.2d at 618.